

From: Roy Seneca/R3/USEPA/US
Sent: 2/13/2013 10:18:41 AM

To: Shawn Garvin/R3/USEPA/US@EPA; Michael DAndrea/R3/USEPA/US@EPA; Richard Sumter/R3/USEPA/US@EPA; Terri-A White/R3/USEPA/US@EPA; Donna Heron/R3/USEPA/US@EPA; Daniel Ryan/R3/USEPA/US@EPA; Bonnie Smith/R3/USEPA/US@EPA; Nancy Grundahl/R3/USEPA/US@EPA; seneca.roy@epa.gov

CC:
Subject: Headlines Highlights for RA's Pad - WEDNESDAY, February 13, 2013

Headline Highlights for RA's Pad - Wednesday, February 13, 2013

Scranton Times-Tribune Hearing board judge lets Dimock water appeal continue

By Laura Legere

Feb 13, 2013 (Menafn - The Times-Tribune - McClatchy-Tribune Information Services via COMTEX) --A state Environmental Hearing Board judge has denied a natural gas drilling company's motion to throw out a recently reinstated appeal by two Dimock Twp. families who object to the state's remedy for their methane-tainted water supplies.

Judge Bernard A. Labuskes Jr. rejected Cabot Oil & Gas Corp.'s argument that the families had forfeited their right to appeal by accepting payments that the company had put into escrow accounts for them. The money had been set aside as part of a Department of Environmental Protection order that required the company to restore or replace 18 damaged water supplies.

The families have argued that the remedy outlined in the order -- payments tied to the value of their homes and a now-expired offer to install treatment systems -- is not sufficient to permanently replace their water wells and would not remove contaminants other than methane. Cabot denies that its operations affected the water supplies.

The two families, the Elys and Huberts, are the last of 12 that initially appealed the state's order with Cabot. The others withdrew their hearing board appeals after they settled a separate lawsuit they brought against the company in federal court.

The Ely and Hubert appeals were briefly withdrawn by their former attorneys without their consent in an "unauthorized --inaccurate, ineffective, and void" action Judge Labuskes said was made by "attorneys who no longer had [the families'] interests at heart."

In his ruling on Friday, Judge Labuskes upheld the reinstatement of the two families' appeals and found that their receipt of the escrow payments did not preclude them from continuing their case.

"So long as a party is aggrieved by a Departmental action, it may pursue an appeal, even if its receipt of some benefits make it less aggrieved than it otherwise might have been," he wrote.

He also pointed out that Cabot had committed "very clearly" to the board in the past that it would not take the position that the families waived their rights or any claims against the company, including their right to continue with the appeal, if they accepted the escrow funds.

"Somewhat remarkably," he wrote, Cabot "has now taken that very position."

In a separate motion filed last week, Cabot offered to install effective treatment systems at the homes if the board agreed to stay or dismiss the appeal and the families agreed to certain conditions, including not having access to the systems without a Cabot representative present and signing a confidentiality agreement that bars them from photographing the system, discussing it with the press or disclosing water sampling results until after the testing phase of the installation is over.

The families' attorneys have until Tuesday to file their response to Cabot's motion.

Scranton Times-Tribune

DEP opens investigation of methane in Dimock water well

By Laura Legere (Staff Writer)

Published: February 13, 2013

State environmental regulators are investigating high levels of methane in a Dimock Twp. water well in an area of the community still off-limits to some natural gas drilling operations because of a past methane incident.

The Department of Environmental Protection began the investigation last week after it received a complaint of turbid water in a private well and later found "high levels" of methane dissolved in the water and airborne gas accumulating in the well, spokeswoman Colleen Connolly said.

Tests at four other water wells did not show elevated levels of the gas, she said, but the state plans to continue monitoring.

The home is near the Costello and Gesford well sites operated by Cabot Oil & Gas Corp. that the state is evaluating as part of its investigation, she said. It is also in a 9-square-mile area where the DEP has barred Cabot from drilling new wells until methane the state first linked to the company's operations in 2009 subsides in 18 water supplies.

The water well now being investigated was not part of the earlier incident, Ms. Connolly said.

Cabot spokesman George Stark said crews discovered that a line that vents shallow methane from the Costello well was frozen during a recent period of cold weather. Since the plug was cleared, levels of gas in the water well have decreased.

"It appears to be a small and localized event," he said and added that Cabot will now monitor all its vent lines during extreme weather events.

The company is providing the home with bottled water.

The Gesford wells being evaluated were hydraulically fractured, or fracked, in November after the state lifted some of its restrictions on Cabot's operations in the area. The process of injecting chemically treated water and sand into rock formations at high pressure releases the gas trapped in the shale.

Fracking has not been implicated in gas migration incidents in the region. Instead, past problems have been tied to faulty construction of gas wells.

Contact the writer: llegere@timeshamrock.com

Pittsburgh Post-Gazette

DEP: Air quality in Pennsylvania improved 2008 to 2011

February 13, 2013 12:21 am

By Don Hopey / Pittsburgh Post-Gazette

Air pollution in Pennsylvania has declined significantly since 2008 because of regulations mandating pollution controls and increased use of natural gas for power production, according to 2011 emissions data released Tuesday by the state Department of Environmental Protection.

The DEP said the pollution reductions translate to \$14 billion to \$37 billion in annual public health benefits.

Emissions from the state's Marcellus Shale gas drilling and production operations in 2011 added 16,542 tons of nitrogen oxides, 6,852 tons of carbon monoxide and 2,820 tons of volatile organic compounds to the air, according to data released by the DEP on Tuesday.

But overall pollutant emissions from all industrial sources, including power plants, have been reduced. Even with the additional Marcellus emissions, sulfur dioxide emissions are down by 511,187 tons from 2008 to 2011, and nitrogen oxides emissions have fallen by 26,668 tons. Volatile organic compound emissions are down by 1,488 tons, and fine particle emissions also have been reduced.

The emissions data are part of a comprehensive air emissions inventory the DEP is required to submit to the U.S. Environmental Protection Agency every three years.

DEP Secretary Michael Krancer said the drilling emissions "represent a small fraction of air pollution in the state."

The Marcellus emissions inventory was based on data reported by 57 well-drilling companies and 40 operators of 150 compressor stations in the state.

Approximately 6,000 Marcellus wells have been drilled in the state, and about half of those are in production.

Don Hopey: [dhoey@post-gazette.com](mailto:dhohey@post-gazette.com) or 412-263-1983.

State Impact Pennsylvania

DEP Says Marcellus Air Emissions Data Show Small Footprint

February 12, 2013 | 6:35 PM

By [Susan Phillips](#)

The Pennsylvania Department of Environmental Protection Secretary Michael Krancer says air emissions associated with Marcellus Shale production are a small fraction of air pollution in the state. The DEP announced the release of air emissions data collected in 2011. In the announcement, Secretary Krancer stressed that air emissions in the state have dropped since drilling began in earnest back in 2008.

It is worth noting that annual sulfur dioxide emissions are down more than half a million tons per year from where they were in 2008, Krancer said in a press release. This is a direct result of air quality regulations and the increased use of natural gas in the power generation sector.

DEP says studies of air emissions associated with natural gas drilling conducted in 2010 showed no danger of health impacts, nor did they rise above the federal ambient air quality standards for carbon monoxide, nitrogen dioxide, sulfur dioxide and ozone.

But a study released last month by the Rand Corporation says potential environmental and health related costs of Marcellus air pollution ranged between \$7.2 million and \$32 million. The Report, Estimation of regional air-quality damages from Marcellus Shale natural gas extraction in Pennsylvania, also acknowledged that shale production air emissions were not the largest source of air pollution in the state. But, the Rand report says some regions could be significantly impacted by the activity.

While statewide emissions from the extraction industry are relatively small compared to some other major sources of air pollution in the state (e.g., SO2 from GW-scale coal-fired power plants), these emissions sources are nevertheless a concern in regions of significant extraction activities. More detailed analyses, including regional data acquisition and consideration of site-specific variability, will be valuable in regions of intense extraction activity and for specific activities and pollutants shown in this analysis to be of most potential concern. And while significant uncertainty may exist for some potential risks of shale gas extraction, under current standard practices, shale gas extraction will be associated with non-trivial air pollution emissions.

The Rand Corporation study looked at four sources of regional air pollutants resulting from natural gas production. These include truck traffic, emissions from the well sites during drilling and hydraulic fracturing, the use of diesel engines, fugitive emissions from the wellhead, and emissions associated with the transport of gas via compressor stations.

More details on the DEP data is available on their website.

Frederick News-Post

Feds seek access to development site near Detrick

Request for well drilling, groundwater testing has been ignored

Originally published February 13, 2013

By Pete McCarthy

The federal government wants access to a residential development site near Fort Detrick's Area B to drill wells and complete groundwater testing.

In a letter obtained by The Frederick News-Post on Tuesday, the U.S. Environmental Protection Agency said that Rocky Gorge Development LLC has repeatedly ignored requests from the Army to gain access to monitor the 90-acre Shookstown Road property.

The development company was given one week to respond to the EPA directive. A company leader confirmed receiving the letter Monday.

"EPA believes the proposed work is necessary and appropriate to better understand the nature and extent of contamination migrating from the Fort Detrick Area B Superfund site, and to ensure the protection of human health and the environment," wrote Paul Leonard, associate director in the EPA Office of Federal Facility Remediation and Site Assessment, in the Feb. 8 letter.

According to the letter, the Army has repeatedly sought access to the property since March 2011. The Army wants to extend its groundwater testing by installing wells, the letter stated. The risk is there, according to Leonard's letter, that unsafe levels of chemicals could have leaked from Area B to the adjacent property set for development.

Chris Dormont, Rocky Gorge Development chairman, said his company has discussed the letter with an attorney and

plans a quick response.

The development, also known as Waverley View, was before the Frederick Planning Commission on Monday night for slight changes to its master plan. Granted initial approval in 2001, the project has remained idle since then, but developers hope to move forward later this year, according to attorney Rand Weinberg.

"This project, after 11 years, is about to get off the ground," Weinberg said at the meeting.

The changes requested Monday night would modify infrastructure improvements, which the developer must complete before construction can begin. Rocky Gorge is looking to build 730 houses, townhouses and apartments on the property.

The meeting got contentious when residents living near the development site asked the city planning commission to put conditions on any approval that would require extensive testing before work could begin.

The board ultimately approved Rocky Gorge's request unanimously when staff said the scope of the request was too limited to consider the residents' concerns.

"Our hands are really tied," planning commission member Rick Stup said Monday night.

Jennifer Peppe Hahn, a member of the city's Fort Detrick Restoration Advisory Board, said it was incumbent upon the commission to take a stand.

"This is not about politics or a developer's rights," she said. "This is about setting protocol in an unprecedented situation to best suit the future health needs of our own community."

Dorment said Monday night that his company has done its own testing on the property. While he understood the residents' concerns, Dorment said he was confident building houses there would be safe.

"I like to think I have a conscience," Dorment said. "I would not want to proceed with any project that was going to cavalierly unleash that evil on other people."

Washington Post

Obama promises climate action

While President Obama called on Congress to pass the same kind of cap-and-trade legislation which died in 2010, urging it to pursue a bipartisan, market-based solution to climate change, no such bill is likely to pass in the next two years.

The president acknowledged this in his speech, saying, But if Congress won't act soon to protect future generations, I will.

I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy, he added.

Obama did not specify if the Environmental Protection Agency would regulate greenhouse gas emissions from existing power plants, which would have the biggest impact on America's carbon output. But this remains a viable policy option, along with directing federal funds to help communities adapt to climate change and promoting renewable energy development on public land. EPA may also take other measures aimed at cutting air pollution in an Obama second term, whether it's limiting cruise ship pollution or setting a tighter standard for smog-forming ozone. But the president was silent on one of the most contentious climate issues he will face: whether to grant a presidential permit to the Keystone XL pipeline project.

Federal workers unions rally near Capitol to protest sequestration

By Joe Davidson, Wednesday, February 13, 12:10 AM

Public servants were out in force Tuesday, protesting potential federal budget cuts that would severely hinder their ability to serve the public.

Hours before the State of the Union address, members of the American Federation of Government Employees (AFGE), the American Federation of State, County and Municipal Employees (AFSCME), and other labor organizations gathered in a park across from the Capitol, where President Obama was scheduled to give his annual report to Congress.

Hey, hey, ho, ho, sequestration s got to go, the union members chanted, hoping the message would get through to lawmakers on Capitol Hill.

The workers were protesting the automatic, across-the-board budget cuts known as sequestration, which will take effect March 1 unless Congress acts to prevent them. The reductions are designed to save \$85 billion through the end of this fiscal year. To get there, agency budgets would be reduced by 9 percent, except for the Defense Department s, which would take a 13 percent hit.

Employees in all agencies, except the Department of Veterans Affairs, would probably be required to take unpaid leave or furlough days.

We re trying like hell to stop it, AFGE President J. David Cox Sr. said before mounting a platform to address the rally. He was followed by AFSCME President Lee Saunders and AFL-CIO President Richard L. Trumka.

Looking at the crowd dressed in union colors, Cox noted the green and blue, then said: Congress is looking at red. They want our blood.

In the Capitol across the street, there was a sense of urgency that something must be done which is not the same as optimism that something will be done. The workers want Congress to do its job, just as Congress expects federal workers to do theirs. They get their jobs done far better than the politicians on the Hill do.

Here we are once again on the brink of a fiscal meltdown, said a statement from Rep. Steny H. Hoyer, the House s second-ranking Democrat. His Maryland district is home to thousands of federal employees.

It s a game that has no winners, only losers, like the 14,000 teachers, assistants and other education staff who would lose their jobs, or the 125,000 families who would be at risk of losing their homes when our rental assistance program is cut, or the thousands of civilian defense personnel in my district alone and throughout this country who would be furloughed for up to 22 days during the year and the hundreds of thousands around the country, across every service branch, he said. Not to mention the tens of thousands of defense contractors, critical to our national security who would be at risk of losing their jobs.

Diminished service to the public was the theme of two federal employees who spoke about cutbacks already implemented by the Social Security Administration (SSA) and the impact sequestration would have on Agriculture Department food inspections.

Because of reduced office hours for the public and cutbacks in overtime for the staff, there s a lot of people who are seeing their paychecks cut by \$100 to \$200 a paycheck, said Pam Baca, an AFGE representative who works for the SSA in Trinidad, Colo.

For the public, she added, the reduced hours mean that now the backlog is growing for claims processing.

Trent Berhow, a U.S. Agriculture Department consumer-safety inspector and an AFGE officer in St. Joseph, Mo., said the planned cutbacks would mean lost wages, consumers would experience limited meat, poultry and egg product supplies, higher prices, and food safety will be compromised.

The sequestration is horrible policy, he continued. I am here today with you, my brothers and sisters, to send a message to Congress: End this sequestration madness now!

Food inspections demonstrate how a sequester could affect consumers and workers beyond the federal workforce. The USDA says the budget cuts could mean unpaid leave for up to 15 days for Food Safety and Inspection Service employees, including inspectors.

Without inspectors, production of meat, poultry and egg products would have to shut down. The USDA says that would affect about 6,290 facilities nationally, resulting in more than \$10 billion in production losses and \$400 million in lost wages for industry workers.

As the sequester, which would lead to pay-less days for federal workers, is being debated, so is legislation that would extend the freeze on their basic pay rates through the end of 2013. A vote on the bill, sponsored by a group of House Republicans, is planned for this week. The freeze is scheduled to end in March. Obama has called for workers pay to increase by 0.5 percent at that time and by 1 percent starting in 2014.

Despite what supporters of this proposal may say about respecting the work of federal employees, said a statement from Colleen M. Kelley, president of the National Treasury Employees Union, blocking a modest pay raise of 0.5 percent for dedicated public servants who are working under a 27-month pay freeze sends quite the opposite message that neither they nor their work are viewed as important to our nation.

Philadelphia Inquirer

Commentary: Obama must act on climate change

Posted: Wednesday, February 13, 2013, 3:01 AM

By George Jugovic Jr.

This weekend I will be camping in the heart of the Pennsylvania Wilds, in the north-central part of the state, to attend an annual wild game feed. The Wilds provide more than two million acres of lush forests, mountain trails, and cold streams in which to be active.

Peering out into the Kinzua Gorge from the Kinzua Bridge Skywalk brings a lot into focus in February: It raises questions about how much of what you look down on from 301 feet will remain for future generations. Simply put, how much of the wildlife that calls Pennsylvania home will continue to commune with us in the face of a changing climate?

The National Wildlife Federation (NWF) has just released a report, "Wildlife in a Warming World: Confronting the Climate Crisis," that speaks to the deteriorating outlook for some of America's most iconic species including moose, sandhill cranes, and sea turtles. As Superstorm Sandy demonstrated, extreme weather fueled by climate change can turn coastal habitats upside down.

Of the 72 national wildlife refuges along the Atlantic coast, many of them an easy drive from Philadelphia, 35 were temporarily closed because of the storm's devastation, not to mention the widespread destruction of property and infrastructure. Where our avian friends are concerned, a recent study looked at 305 species of birds in North America and found that 177 have expanded their range northward by an average of 35 miles in the last four decades. Scientists tell us that if we don't act now, temperatures will rise 7 to 11 degrees within the lifetime of a child born today.

How should we confront this crisis? We can take our cue from Teddy Roosevelt, our 26th president, who said, "The health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals, and

in this great work the national government must bear the most important part." President Obama echoed that sentiment in his recent inaugural address: "We will respond to the threat of climate change, knowing that our failure to do so would betray our children and future generations. ... That is how we will maintain our economic vitality and our national treasure - our forests and waterways; our croplands and snow-capped peaks."

The NWF report outlines specific steps the president can take to meet the climate-change challenge, such as a transition to cleaner, more secure sources of energy, including offshore wind, solar power, and next-generation biofuels. Obama has already increased vehicle fuel-efficiency standards and moved to limit carbon pollution from new power plants. Now, he needs to use the Clean Air Act to limit carbon pollution from existing power plants, the country's largest source of carbon pollution. Also, the president needs to safeguard wildlife and their habitats by promoting climate-smart approaches to conservation, and to help communities prepare for climate impacts like flooding and extreme weather with solutions that include green infrastructure.

We have a moral responsibility to confront climate change and we call on Obama to act immediately for the benefit of future generations.

George Jugovic Jr. is president and chief executive officer of Citizens for Pennsylvania's Future (PennFuture). E-mail him at jugovic@pennfuture.org.

Greenwire

Rulemaking chops seen as edge for 2 inside candidates to replace Jackson

Jason Plautz and Jean Chemnick, E&E reporters

Published: Tuesday, February 12, 2013

With U.S. EPA Administrator Lisa Jackson leaving the agency today, two of her lieutenants are being discussed in Washington, D.C., as leading candidates to succeed her.

Deputy Administrator Bob Perciasepe and EPA air chief Gina McCarthy -- both with extensive experience at EPA and as state regulators -- have the regulatory chops that environmentalists prize and also have reputations for giving industry a seat at the table for rulemakings.

With major regulations in the offing -- notably, greenhouse gas standards for new and existing power plants -- industry representatives say an ability to work with business is badly needed.

"I hope the president doesn't pick someone who will be overwhelmed with scoring political points instead of constructive work," said Scott Segal of Bracewell & Giuliani's Policy Resolution Group. "Frankly, the environmental and the energy arena is polarized enough without that."

A seasoned politician, former Washington Gov. Christine Gregoire (D) has been mentioned as a possible Jackson successor and so has California Air Resources Board Chairwoman Mary Nichols, who was EPA air chief under President Clinton until 1997.

But most agency watchers are giving the edge to McCarthy and Perciasepe because of their experience on rulemaking in President Obama's first term and relationships with the electric utility industry.

Perciasepe, who now serves as acting administrator, was EPA's top water official and later the top air official under Clinton. He has been chief operating officer at the National Audubon Society and served as Maryland's environment secretary.

McCarthy oversaw the office responsible for the agency's highest-profile rulemakings in Obama's first term, including for carbon dioxide, sulfur in gasoline and first-time federal efforts to regulate hydraulic fracturing. She came to EPA after serving as a top state regulator in Connecticut and Massachusetts.

McCarthy's gender might also make her an attractive choice for Obama, who has been criticized for nominating white males to his second-term Cabinet. He did nominate a woman, Recreational Equipment Inc. CEO Sally Jewell, to lead the Interior Department last week (*Greenwire*, Feb. 6).

A utility source said Perciasepe is seen by industry as "somebody that you could talk to," even though he might toe the administration line on regulation. "He's seen as somebody who's not an ideologue," the source said, "and who has talked to industry in the past and who would be accessible."

McCarthy, meanwhile, is personally identified with the air rules, which makes her popular with people who support the regulations and controversial with their opponents. She was quoted in a 2009 *Greenwire* profile saying she was not one to shrink from an argument (*Greenwire*, Nov. 13, 2009).

"I don't know if it's my Irish blood, but ... I love disagreements," McCarthy said. "I love the democratic process. If I'm in a room where everybody agrees, I start to nod off."

Bill Becker, executive director of the National Association of Clean Air Agencies, said McCarthy's sense of humor has been an asset when explaining the agency's perspective, especially during her frequent visits to House offices at the behest of the GOP majority.

"She is able to take a difficult situation that is unsettling and, through her humor and social skills, make people feel better," Becker said.

'Rigorous and fair'

But McCarthy's experience at the helm of environmental departments in Massachusetts and Connecticut, states that are invested heavily in non-coal electric generation, is unlikely to persuade coal-fired utilities that she would give a sympathetic ear to their concerns, the utility source said.

As a state regulator, McCarthy helped lay groundwork for the multi-state Regional Greenhouse Gas Initiative (RGGI). Industry has panned the first-in-the-nation carbon dioxide cap-and-trade program as a stealth tax, and Senate Republicans would likely raise the topic of McCarthy's involvement with it at her confirmation hearing.

Yet McCarthy has been praised for working with industry throughout her career.

Gloria Bergquist, spokesman for the Alliance of Automobile Manufacturers, said McCarthy was receptive to her group in setting higher fuel economy standards through model year 2025.

"Gina McCarthy has been a pragmatic policymaker who strives for aspirational goals, while at the same time realizing how real-world realities, like consumer demand, affect those goals," Bergquist said.

"She has been a supporter of a rigorous midterm review of fuel economy standards, and that has been an important priority to the auto industry. McCarthy has also been an advocate for a single national program to avoid a piecemeal approach to policy that would ultimately take money out of consumers' pockets."

The midterm review for the 2017-2025 standards was a big prize for automakers, which said the time frame for implementing the standards was too far away and they needed a chance to consider sales, cost and technology. Some environmentalists are concerned that the review could create a loophole for car companies to weaken the standards, but they have vowed to make sure all parties are involved in the review.

And Frank O'Donnell of Clean Air Watch pointed to McCarthy's work on rules governing diesel backup generators as a sign that she can sometimes be too conciliatory to industry. Faced with a lawsuit from the demand-response

company EnerNOC Inc. following the agency's rulemaking limiting air emissions from reciprocating internal combustion engines, McCarthy and her staff tried to strike a deal to keep the company happy. They eventually settled on terms that would allow backup generators to use diesel engines for 150 hours per year, dropping to 100 hours per year in 2017.

But public health and environmental groups took issue with a separate part of the deal, which allowed generators to run for up to 50 hours per year during high demand or "peak shaving" periods until August 2017, which was eventually struck from the final rule released last month.

"Anybody coming in is going to have to have some of that ability to bridge the gap between stakeholders who have diametrically opposed views. That's never an easy lift," O'Donnell said.

An EnerNOC spokesman said those involved with the talks described McCarthy and her team as "rigorous and fair."

Congressional Republicans have long attacked Jackson's EPA as being aggressive, overreaching and job-killing for its series of regulations. But other observers say that EPA never took the adversarial posture toward industry conjured in Republican rhetoric.

In fact, some environmentalists say that the agency may have even been too conciliatory to industry on some rules with Perciasepe's and McCarthy's fingerprints.

They say Jackson delayed and rewrote toxics rules for industrial boilers and cement kilns in order to address industry complaints that they were too onerous. This was part of a larger pattern of being mindful to industry concerns, they say.

"I can't think of a rule that has come out over the past several years in the air office -- and the little I know about the other media programs -- that hasn't reflected significant input from the business community," said Becker of the National Association of Clean Air Agencies.

Becker noted that McCarthy, Perciasepe, Nichols and Gregoire all have experience at state regulatory agencies, which he said are sensitive to the needs of industry. State administrators must take a practical approach to regulation, he said, because state economies depend upon it.

"When I talk with colleagues in the business community, they are treated very fairly and respectfully by both," he said of McCarthy and Perciasepe. "It is not surprising that they've taken that skill from the state level to the federal level and that they've reached out and sought input from the business community."

'Unfortunate pattern of ignoring the law'

James Pew, an attorney for Earthjustice who worked on the litigation that accompanied the boiler and cement maximum available control technology [MACT] rules, said EPA sometimes violated the law and ignored court rulings in order to pacify industry stakeholders.

Obama's EPA was tasked with writing both rules, which had been postponed indefinitely under the George W. Bush administration. The agency released a Boiler MACT rule in June 2010 that Pew said was stringent enough to meet Clean Air Act criteria. But he said EPA took an apologetic tone in statements accompanying the proposal and asked for more time to reconsider it.

This fueled congressional and industry calls for the agency to rewrite the standard, including legislative efforts that failed (*E&ENews PM*, March 8, 2012).

The agency's stance helped pave the way for a rule that was less protective of public health, Pew said.

"In my view, that was just a transparent attempt to kick the ball down the road," Pew said. "There were no real defects in the rule; EPA just didn't want to issue unpopular rules."

EPA also took legal steps to undermine its own boiler rule, Pew said, when the agency asked the courts to extend a judicial deadline to allow it to be rewritten, and then asked for a stay on implementation. The court rejected both attempts.

"It sort of spiraled into this unfortunate pattern of ignoring the law, running afoul of the court and undermining its own rules because it would rather accommodate industry than comply with the Clean Air Act," he said.

EPA sabotaged its cement kiln rule for much the same reason, he said. After the initial rule weathered a legal challenge by the industry, the Obama administration voluntarily swapped it for a less stringent standard on the pretext that industry might win on appeal.

These actions by EPA happened between 2010 and 2012, when the White House was struggling to protect Democratic seats in Congress and to ensure the president's re-election. Pew said he hoped the political winds had changed enough that EPA would not feel compelled to pursue a similar policy of capitulation in the future.

EPA's decisions on boiler and cement kilns -- and the White House's choice in 2011 to kill an ozone rule -- were all made on Jackson's watch, Pew noted. And Jackson is generally regarded as a very pro-environment, pro-public health administrator. This indicates that White House policy might trump an administrator's inclinations, no matter who that administrator is, he said.

Segal of Bracewell & Giuliani said that with a "perfect regulatory storm on the horizon," whoever is picked would need to strike a careful balance, more than Jackson portrayed publicly.

"This future administrator is going to have to develop regulations that are smart and not costly. Sometimes it seems that for green groups, a good result is what costs the most money and cripples the most industry," Segal said. "That's just not going to work anymore."